THE TRIBUNE.

WRDNESDAY MORNING, JULY 14, 1841.

☞ **For Great Fire at Waterford, &c. see first page.**

☞ **For Literary Gleanings, see last page.**

☞ It will be seen that the Supreme Court of this State has *unanimously* decided against the application of McLEOD for release, and remanded him to Niagara Co. for trial. It is understood that the case will be appealed to the Court of Errors, and thence carried up (if need be) to the U. S. Courts.

☞ See advices by this Morning's Mail for a most triumphant vote—THIRTY-ONE Administration majority—in the House, on the PASSAGE OF THE LOAN BILL. Yeas 124. Nays 93. Of the elected Whigs, only Goggin, Mallory, and Wise, (all of Va.) in the negative.

☞ We regret the necessity which constrains us to state that, unless our private advices from Washington mislead us—and we do not think such can be the fact—THE DOOM OF THE BANK BILL IS SEALED! It is likely to be defeated in the Senate, and very probably has been ere this. The deplorable difference of opinion between certain eminent Whigs regarding the propriety of confiding to the Bank the untrammeled power of establishing Branches in the States, is the rock on which we have split. Mr. CLAY—and a very large portion of the Whigs concur with him—considers it the lesser evil to postpone the creation of a Bank at present rather than surrender for ever the power of Congress to authorize Branches, and thus efficiently regulate the Currency. On the other hand, Mr. ARCHER of Va. will not vote for any Bank; Messrs. RIVES and PRESTON do not feel authorized, in view of the political attitude and presumed wishes of their respective States, to vote for a Bank with power to place it Branches in hostile States; and Mr. MERRICK of Md. is disinclined to vote for Mr. Clay's Bill. So the very strong probability now is that it will never go to the House.

We have said that we regret this; but, if the Whigs are true to themselves, it will prove but a transient misfortune. Six or seven of the Loco-Foco Senators most unequivocally misrepresent their constituents—for instance, Perry Smith of Ct. Silas Wright of N. Y. Mouton of Lou. Tappan and Allen of Ohio, &c. These cannot hold out and hold on for ever. But immediate relief is almost certain. Tennessee is now represented in the Senate by one chance-made Loco Foco, who must evaporate as soon as the Legislature assembles in September. That Legislature will almost certainly choose two straight-forward 'Bank Whigs,' making a change of *three* votes in the Senate. In other words the Senate will stand at the regular Session 31 to 21 instead of 29 to 22—sufficient to overbear all hair-splitting.

If the Bank is lost for the present, we trust the circumstance will only incite the Whigs to greater unanimity and energy on other subjects. Let the Land Bill, the Loan Bill, the General Bankrupt Bill and the Repeal of the Sub-Treasury be carried now, and the Bank Bill will be pretty safe at the Regular Session. Whigs at Washington!—Whigs every where! let us differ where we must, but never cease to be WHIGS, and to harmonize as far as possible. To fall out by the way and break in pieces would be treason to the Country and its dearest Interests. And shall we so blast the hopes of our friends and excite the contempt of our enemies? Never! Never!

P. S. Since writing the above, we have received the following letter from a well-informed source at Washington.—We give it for what it may be worth, leaving every one to draw their own conclusions:

THE BANK—THE PRESIDENT. AND THE CABINET.

WASHINGTON, July 12, 1841.

Mr. Webb's two articles, in the Courier and Enquirer, in which he charges the Cabinet with violating their duty, sacrificing their principles to their places, intriguing for succession when their energies should be devoted to saving the country, and other trifling offences of that sort, have been read here, and by the uncharitable are set down—[Here follow some personalities, which we omit.—*Ed. Tr.*] The *American*, with no personal denunciation, is hardly behind Mr. Webb in its condemnation of what it supposes to be the course of the President and the Cabinet. It is in vain to reason with these gentlemen. They have taken their course, and will go on until events check them. But for the benefit of those who think it but fair to be informed, before fault-finding commences, it should be made known—

1. That there never was any possibility of obtaining Mr. Tyler's consent to a Bank on the old model. If there had been, even a *possibility*, the old model would have been substantially followed.

2. The Administration was at the beginning of a term of four years, not at the end, or in the middle of it; and the Cabinet were to try a *modified* Bank, or *no* Bank, for those whole four years.

The Courier and American will not think of this. They will not consider that the Cabinet found it to be *impossible* to get such a Bank as they most approved, and, rather than go on through the whole four years without a Bank, they determined to favor the best plan which they could get.

3. Mr. Clay knew, or had reason to know, before he reported his Bill, that it could not become a law.

4. There is not, and there never was in all probability, a majority of the Senate in favor of Mr. Clay's Bill. He will find this out soon; indeed, he had every reason to think so three weeks ago, because it is understood that four Whig Senators assured him personally, seasonably and decisively, that they should not vote for it,

If it passes now, it will be by accident, or by the secession of more or less of the Opposition.

When the measure comes against a stump, and all is at a stand-still, it may be possible that some of our friends may be more disposed to reflection and conciliation.

The situation of those Whigs who go for Mr. Ewing's plan is embarrassing, because they cannot well give their reasons. But when the reasons shall be disclosed by the failure of the bill in the Senate, or the House, or by a Veto, then they will have a chance to defend themselves. At present, it seems impossible to do any thing. About the middle of the last month I noticed some articles in the National Intelligencer on the subject of Mr. Ewing's plan, which placed hints rather than arguments before the public; but no New-York paper ever published them, and I doubt whether the Editors ever read them. * * * * * Yours, &c.

DEATH'S DOINGS.—Dr. WILLIAM JAMES MACNEVEN, one of the 'United Irishmen' of 1798, and exiled from his native land for daring to love and defend her, and for the last forty years a resident of this City, died on Monday in the 79th year of his age. He held the office of Resident Physician for this City under Gov. Clinton; also under Gov. Seward until he resigned it a few days since. He has left a vast circle of friends to cherish his memory. [His funeral will take place at St. Patrick's Cathedral at 10 o'clock to-day.]

ISAAC LAWRENCE, Esq., late President of the U. S. Bank in New-York, and long a highly respected merchant of this City, died also on Monday, aged 74.

FYLER DIBBLEE, Alderman of the Eleventh Ward in 1830, died yesterday, aged 62.

☞ A new route to Boston has been opened: by Steamboat to Hartford $1; do. to Springfield, Mass. 50 cents. Then by Western Railroad to Boston $3: Total $4 50. The Western Railroad is going ahead vigorously. It will have 500 freight cars on the track next winter.

THE CASE OF McLEOD.

IN SUPREME COURT.....UTICA, July 12.

The decision of the Supreme Court in the case of Alexander McLeod on Habeas Corpus was delivered by Justice COWEN. The following is a summary of its most important points:

The prisoner's petition, on which the writ was allowed, stated that his commitment to the jail of Niagara County had not been regular; but this ground is now abandoned.—The indictment returned by the sheriff on which McLeod pleaded not guilty, charges, in the usual form, the murder of Amos Durfee by the prisoner. This fact and others contained in the bill, are open to a denial by affidavit or the allegation of any fact to show that the imprisonment is unlawful. In such a case the Court must proceed in a summary manner to hear allegations in support of the imprisonment and to dispose of the party as the justice of the case may require. Under color of complying with this provision, the prisoner, not denying the jurisdiction of the Court or the regularity of the commitment, has interposed an affidavit stating certain extrinsic facts: one is that he was absent and did not participate in the alleged offences; the other that if present and acting it was in necessary defence of his country against a treasonable insurrection which Durfee was aiding at the time.

Taking these facts as mere matters of evidence upon the issue of not guilty, and of themselves they are clearly nothing more, I am of opinion that they cannot be made available on habeas corpus even as an argument for letting the prisoner to bail, much less for ordering his unqualified discharge. That this would be so on all the authorities previous to the Revised Statutes, his Counsel do not deny. The rule of the case as laid down in the British books, and which has never been departed from in practice under the English habeas corpus act, is, that a man charged with murder by verdict of the Coroner's inquest may be admitted to bail, though not after the finding of an indictment by the Grand Jury.

The depositions heretofore taken in the case being thus cut off, we have no means left of inquiring as to the guilt or innocence of the accused: for nothing can be better settled than that on habeas corpus the examination as to guilt or innocence cannot, under any circumstances, extend beyond the depositions or proofs on which the prisoner was committed. Many cases to be found in the English books were brought forward by the Court, which were in several respects stronger for the prisoners than the case before us. They were mostly founded on charges of a character much less serious than murder. They were all before indictment found: some of them presented a state of things on which it was plainly impossible to convict: and last, though not least, they were mere applications for bail—a thing which McLeod does not ask for. He demands an absolute discharge, on grounds upon which, according to the laws of England, he would not even be entitled to bail. The law of England formed in this respect the law of New-York, until our new habeas corpus act took effect.

It is necessary next to inquire whether the new statute has worked any enlargement of our powers beyond what we have seen they were up to the time when it passed. The section on which the prisoner's Counsel chiefly rely is 2 R. S. sec. 50, p. 471, and the words are, that "the party brought before such court or officer, on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or *allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge*, which allegations or denials shall be on oath." Under this statute the Counsel claim the right to go behind the indictment, and to prove by affidavit that he is not guilty. We have already shown the absurdity of such a proposition in practice, and we are not disposed to admit its adoption by our Legislature without clear words or necessary construction.

Its object is entirely plain without resort to the rules of construction. It is plainly limited to the lawfulness of the authority under which the prisoner is detained without being extended to the force of the evidence upon which the authority was exerted, or which it may be in the prisoner's power to adduce at the trial.

But it is said we have power to direct the entry of a *nolle prosequi*: and this proposition is also put upon a new section of the Revised Statutes, which most clearly gives no color for the suggestion. At common law the Attorney General alone possessed this power; but it has been by several Statutes delegated to District Attorneys. The Legislature, finding the power in so many hands and fearing its abuse, provided that it should not thereafter be lawful for any District Attorney to enter a *nolle prosequi* without leave of the Court having jurisdiction to try the same; and this provision, the prisoner's counsel contended, so enlarged our powers that we might arbitrarily interfere on the prisoner's affidavit or even on grounds of national policy, and that too in despite of the Attorney General and District Attorney. Conceded as it was, that before the Revised Statutes we had no power to give such direction, the argument seeks to draw from the Statute giving us a *veto against the nolle prosequi* a positive power to compel its entry. Even if we had such power, the argument would be quite extraordinary. It demands that we should finally dispose of an indictment for murder, on the sort of evidence by which we are guided upon a motion to set aside a default or change a venue. In any view, this question belongs primarily to the Executive Department of the Government.

We should have felt ourselves perfectly satisfied to dispose of the case on this first question, without looking farther at the nature of the transaction out of which this indictment has arisen. But as counsel made the question of jurisdiction their main topic, we have looked into this as far as possible.

It is said that this case belongs exclusively to the forum of nations. To show this the affidavit of McLeod is produced, from which the inference is sought to be raised that the Niagara frontier was in a state of war against the contiguous province of Upper Canada; that the homicide was committed by McLeod, if at all, as one of a military invading expedition, set on foot by the Canadian authorities to destroy the boat Caroline; that he was a British subject.—That the expedition crossed our boundary, sought the Caroline at her moorings in Schlosser, and there set fire to and burned her, and killed Durfee, one of our citizens, as it was lawful to do in time of war.

To warrant the destruction of property or the taking of life, on the ground of public war, it must be what is called *lawful war* by the law of nations—a thing which can never exist without the concurrence of the treaty-making power. No private hostilities, however general or however just, will constitute what is called a legitimate and public state of war.

So far were the two governments of England and the United States from being in a state of war when the Caroline was destroyed, that both were struggling to avoid such a turn of the excitement then prevailing on the frontier as might furnish the least occasion for war. Both had long maintained the relations of national amity, and have done so ever since, under an actual treaty. So far from England fitting out a warlike expedition against the United States, or any public body, she utterly disavows any such object; while on our side we have inflicted legal punishment on the leaders of the expedition of which Durfee made a part, on the ground that England was then at peace with us. Whatever hostile acts she did were aimed exclusively at private offenders; and if there was a war in any sense, the parties were England on one side, and her rebel subjects, aided by certain citizens of our own, acting in their private capacities and contrary to the wishes of this government, on the other.

There are but three sorts of war: *public*, *private*, and *mixed*. Grot. B. 1, ch. 3, sec. 1. Private war is unknown in civil society, except where it is lawfully exerted by way of defence between private persons. To constitute a public war, at least two nations are essential parties, in their corporate capacities. Mixed war can be carried on only between a nation on one side and private individuals on the other. There is no fourth kind. Grot. ut Supra.

The right of one nation, or any of its citizens, to invade another, or enter it and do any harm to its property or citizens, does not arise till public war be lawfully denounced in some form.

Neither the provincial authorities nor the sovereign power of either country have, to this day, characterized the transaction as a public war, *actual* or *constructive*. They never thought of its being one or the other. Both have spoken of it as a transaction *public on one side*, to be sure, but both claimed to hold fast the relations of peace. Counsel seem to have taken it for granted that a nation can do no public forcible wrong without its being at war, even though it deny all action as a belligerent. At this rate every illegal order to search a ship, or enter on a disputed territory, or for the recaption of national property even from an individual, if either be done *vi et armis* and work wrong to another nation or any of its subjects, would be public war, necessarily so, though the actor should deny all purpose of war. Were such a rule once admitted, England and the United States can scarcely be said to have been at peace since the Revolution, which made them two nations.

[The Court cited numerous authorities to define what is meant by mixed war, and to show that it can never extend into the territory of a nation at peace. The Opinion then proceeds:]

To apply these authorities: The affidavit of McLeod suggests that Durfee had, on the day before he was killed, aided in transporting military stores to Navy Island, and surmises that he intended to continue the practice. I put it again that the war, if any, was by England against him and his associates—not against the United States. But what right, I again ask, had she to pursue him into a territory at peace? That she had none I have shown from her own judge sitting in the forum of nations, from one of our judges in the like forum, from authoritative publicists, and from all antiquity. I have shown that even punic faith felt itself bound to let an enemy go free whom it accidentally met on neutral ground. Within the territory of a nation at peace, all belligerent power, all belligerent right, is paralyzed. They have passed from the dominion of arms to that of law. "No violence can be offered," says Grotius; "but you must proceed in a judicial way." The only offence against our law which Durfee had committed, was in setting on foot a hostile expedition against England, with whom we were at peace. So far I admit he was guilty according to the suggestion of McLeod's affidavit. He had made himself a principal in the aggression of McKenzie and others; for there are no accessories in misdemeanor. The courts were open. Why did not England prefer her complaint? Was it competent for her to allege that our justice was too mild or too tardy, and therefore substitute the firebrand and musket? To admit such a right of interference on any ground or in any way, says Marshall, would be proportional diminution of our own sovereignty, of which judicial power makes a part. "The law of nations," says Rutherforth, "is not the only measure of what is right or wrong in the intercourse of nations with each other. Every nation has a right to determine by positive law upon what occasions, for what purposes, and in what numbers foreigners shall be allowed to come within its territories." Ruth. B. 2, ch. 9, sec. 6. Vattel, B. 2, ch. 7, sec. 94.

It follows from the authorities cited, that a right to carry on mixed war never extends into the territory of a nation at peace. It can be exercised on the high seas only, or in a territory which is vacant and belonging to nobody. It is in modern law confined mainly to the case of pirates. But even these cannot be arrested in the territory of a foreign nation at peace with the sovereign of the arresting ship. Molloy de Jur. Mar. B. 1, ch 1, 1 6.

But admitting that England might protect a man against our jurisdiction by saying he did a public act under her authority, does it not behove her at least to show that she was acting within the limit of her own jurisdiction, especially where she has prescribed them to herself? Shall her declaration serve to deprive us of power where she is exceeding her own? And this brings one to inquire whether the transaction in question be such as any national right so far examined can sanction. She puts herself, as we have seen, on the law of defence and necessity; and nothing is better defined nor more familiar in any system of jurisprudence than the juncture of circumstances which can alone tolerate the action of that law. A force which the defender has a right to resist must itself be within striking distance. It must be menacing, and apparently able to inflict physical injury, unless prevented by the resistance which he opposes. The rights of self-defence and the defence of others standing in certain relations to the defender, depend on the same ground—at least they are limited by the same principle. It will be sufficient, therefore, to inquire of the right so far as this is strictly personal. All writers concur in the language of Blackstone [3 Com. 4] that, to warrant its exertion at all, the defender must be forcibly assaulted. He may then repel force by force, because he cannot say to what length of rapine or cruelty the outrage may be carried, unless it were admissible to oppose one violence with another. "But," he adds, "care must be taken that the resistance does not exceed the bounds of mere defence and prevention; for then the defender would himself become the aggressor." The condition upon which the right is thus placed, and the limits to which its exercise is confined by this eminent writer, is enough of itself, when compared with McLeod's affidavit, to destroy all color for saying the case is within that condition. The Caroline was not in the act of making an attack on the Canada shore; she was not in a condition to make one; she had returned from her visit to Navy Island, and was moored in our own waters for the night. Instead of meeting her at the line and repelling force by force, the prisoner and his associates came out under orders to seek her wherever they could find her, and were in fact obliged to sail half the width of the Niagara River, after they had entered our territory, in order to reach the boat. They were the assailants; and their attack might have been legally repelled by Durfee even to the destruction of their lives. The case made by the affidavit is in principle this: a man believes that his neighbor is preparing to do him a personal injury. He goes half a mile to his house, breaks the door, and kills him in bed at midnight.—On being arraigned, he cites the law of nature, and tells us that he was attacked by his neighbor, and slew him on the principle of mere defence and prevention; or, in the language of the plea, for an assault *demesne*—"he made an assault upon me, and would then and there have beat me, had I not immediately defended myself against him; wherefore I did then and there defend myself as I lawfully might for the cause aforesaid; and in doing so, did necessarily and unavoidably beat him, doing him on such occasion no unnecessary damage. And if any damage happened, it was occasioned by his assault and my necessary defence."

"To excuse homicide in self-defence," says another English writer, "the act must not be premeditated. He must first retreat as far as he safely can, to avoid the violence threatened by the party whom he is obliged to kill. The retreat must be with an honest intention to escape; and he must flee as far as he conveniently can by reason of some impediment, or as far as the fierceness of his assassin will permit him, and then in his defence he may kill his adversary." 1 Russ. on or, 544.

Such is the law of mixed war, on neutral ground. The books cited are treating of no narrow technical rule peculiar to the common law; but the law of nature and of nations, the same everywhere, of such paramount price as no municipal or international law could ever overcome; and intelligible to every living soul. It is easily applied both as between individuals in civil society and nations at peace.—Passing the boundaries of strict not fancied necessity, the remedy lies in suit by the State or citizen whose rights have been violated, or by demanding the person of the mischievous fugitive who has broken the criminal law of a foreign sovereign. Accordingly, Puffendorf, after considering the rights of private war in a state of nature, adds: "But we must by no means allow an equal liberty to the members of civil States. For here, if the adversary be a foreigner, we may resist and repel him any way at the instant when he comes violently upon us. But we cannot, without the sovereign's command, either assault him whilst his mischief is only in machination, or revenge ourselves upon him after he has performed the injury against us." Puf. B. 2, ch. 5 sec. 7. The sovereign's commands must, as we have seen, in order to warrant such conduct in his subject, be a declaration of war.

England, then, could legally impart no protection to her subjects concerned in the destruction of the Caroline, either as a party to any war, to any act of public jurisdiction exercised by way of defence, or sending her servants into a territory at peace. That her act was one of mere arbitrary usurpation was not denied on the argument, nor has this, that I am aware, been denied by any one except England herself. I should not, therefore, have examined the nature or the transaction to any considerable extent, had it not been necessary to see whether it was of a character belonging to the law of war or peace. I am entirely satisfied it belongs to the latter: that there is nothing in the case except a body of men, without color of authority, bearing muskets and doing the deed of arson and death; that it is impossible even for diplomatic ingenuity to make it a case of legitimate war, or that it can plausibly claim to come within a law of war, public, private, or mixed. Even the British Minister is too just to call it war; the British Government do not pretend it was war.

The result is that the fitting out of the expedition was an unwarrantable act of jurisdiction exercised by the provincial government of Canada over our citizens. The movements of the boat had been watched by the Canadian authorities from the opposite shore. She had been seen to visit Navy Island the day before. Those authorities, being convinced of her delinquency, sentenced her to be burned; an act which all concerned knew would seriously endanger the lives of our citizens. The sentence was, therefore, eqvivalent to a judgement of death; and a body of soldiers were sent to do the office of executioners.

Looking at the case, independently of British power, no one could hesitate in assigning the proper character to such a transaction. The parties concerned having acted beyond their territorial or magisterial power, are treated by the law as individuals proceeding on their own responsibility. If they have burned, it is arson; if a man has been killed, it is murder.

This brings us to the great question in the cause. We have seen that a capital offence was committed within our territory in time of peace; and the remaining inquiry is, whether England has placed the offenders above the law and beyond our jurisdiction, by ratifying and approving such a crime. It is due to her, in the first place, to deny that it has been so ratified and approved. She has approved *a public act of legitimate defence only*. She cannot change the nature of things. She cannot turn that into lawful war which was murder in time of peace. She may, in that way, justify the offender as between him and his own government. She cannot bind foreign courts of justice by insisting that what in the eye of the whole world was a deliberate and prepared attack, must be protected by the law of self-defence.

In the second place, I deny that she can, in time of peace, send her men into our territory, and render them impervious to our laws by embodying them and putting arms in their hands. She may declare war: if she claim the benefit of peace, as both nations have done in this instance, the moment any of her citizens enter our territory, they are as completely obnoxious to punishment by our law, as if they had been born and always resided in this country.

I will not, therefore, dispute the construction which counsel put upon the language or the acts of England. To test the law of the transaction, I will concede that she had by act of Parliament conferred all the power which can be contended for in behalf of the Canadian authorities, as far as she could do so. That, reciting the danger from piratical steamboats, she had authorised any Colonel of her army or militia, on suspecting that a boat lying in our waters intended illegally to assault the Canada shore, to send a file of soldiers in the day or night time, burn the boat and destroy the lives of the crew. That such a statute should be executed: but that one of the soldiers failing to make his escape, should be arrested, and plead the act of Parliament. Such an act would operate well, I admit, at Chippewa, and until the men had reached the thread of the Niagara river. It would be an impenetrable shield till they should cross the line of that country where Parliament have jurisdiction. Beyond I need not say it must be considered as waste paper. Even a subsequent statute ratifying and approving the original authority could add nothing to the protection proffered by the first. It would be but the junction of two nullities. So says Mr. Locke, (on Gov. B. 2, ch. 19, sect. 239,) of a king even in his own dominions: "In whatsoever he has *no authority*, there he is *no king*, and may be resisted: for wheresoever the *authority ceases* the *king ceases too*, and becomes like other men who have no authority." I shall not cite books to show that the Queen of England has no authority in this state in a time of peace.

But it is said of the case at bar, Here is more than a mere approval by the adverse Government; that an explanation has been demanded by the Secretary of State; and the British embassador has insisted on McLeod's release, and counsel claim for the *joint* diplomacy of the United States and England some such effect upon the power of this court as a certiorari from us would have upon the county court of general sessions. It was spoken of as incompatible with a judicial proceeding against McLeod in this State; as a suit actually pending between two nations, wherein the action of the General Government comes in collision with and supersedes our own.

To such an objection the answer is quite obvious. Diplomacy is not a judicial, but executive function; and the objection would come with the same force whether it were urged against proceeding in a court of this State or the United States. Whether an actual exertion of the treaty-making power, by the President and Senate, or any power delegated to Congress by the Federal Constitution, could work the consequences contended for, we are not called upon to inquire: whether the executive of the Nation (supposing the case to belong to the National Court,) or the executive of this State might not pardon the prisoner, or direct a nolle prosequi to be entered, are considerations with which we have nothing to do.

The Executive power is a constitutional department in this, as in every well organized government, entirely distinct from the judicial. And that would be so, were the National Government blotted out, and the State of New-York left to take its place as an independent nation.

Not only are our constitutions entirely explicit in leaving the trial of crimes exclusively in the hands of the judiciary; but neither in the nature of things, nor in sound policy, can it be confided to the Executive power. That can never act upon the individual offender, but only by requisition on the foreign government: and in the instance before us, it has no power even to inquire whether it be true that McLeod has personally violated the criminal laws of this State. It has charge of the question in its national aspect only. It must rely on accidental information and place the whole question on diplomatic considerations. These may be entirely wide either of the fact or the law as it stands between this State and the accused. The whole may turn on questions of national honor, national strength, the comparative value of national intercourse, or even a point of etiquette.

All homicide is presumed to be malicious, and, therefore, murder, until the contrary appear upon evidence. "The matter of fact," says Foster, "viz: whether the facts alleged, by way of *justification*, *exercise* or *alleviation*, are true, in the proper and *only* province of the *jury*:" Lawful defence by an individual, (still recognized, it seems, by the law of nature under the name of private war, Grot B. 1. ch. 3. §2) is one instance. (Foster, 273.) That he acted in right of a nation, or under public authority, is no more than matter of justification. It is like the case mentioned in Foster, 265; the public execution of malefactors: and the jury must judge whether the authority may not have been exceeded. But more, when either public or mixed war is alleged in mitigation, either allegation may be fictitious; and it shall be put to the jury, on the proper evidence, whether it existed or not. The reason is plain, says Lord Hale; for the war may be begun by the foreign prince only, where it is public; and he supposes it still plainer where the war is between the king and an invading alien being the subject of a nation with whom the king is at peace. 1 Hal. p. 6. 163. The same writer puts the case of plunder and robbery by an enemy, *tem pus belli*, which would not in general be burglary. Yet he admits it might be otherwise if the act were not done in the regular prosecution of the war. id. 565.

Suppose a prisoner of war to escape, and that on his way home, and before he crosses the line, he should set fire to a farm-house in the night and kill the inmates: is there a doubt that he might properly be convicted either of arson or murder? When a grand jury have charged that a man has committed murder in this State, I can imagine no case, whether the charge relate to the time of open public war or peace, in which he can claim exemption from trial. If he show that he was in truth acting as a soldier in time of public war, the jury will acquit him. The judge will direct them to obey the law of nations, which is undoubtedly a part of the common law. So if the accused were acting in defence against an individual invader of his country. But above all things is it important in the latter case for the jury to inquire whether his allegation of defence be not false or colorable.

They cannot allow as an act of defence, the wilful pursuing even such an enemy, though dictated by sovereign authority, into a country at peace with the sovereign of the accused, seeking out that enemy and taking his life. Such indeed, can be nothing but an act of vengeance. It can be nothing but a violation of territory, a violation of the municipal law, the faith of treaties, and the law of nations. The government of the accused may approve, diplomacy may gloze, but a jury can only inquire whether he was a party to the deed, or to any act of illegal violence which he knew would probably endanger human life. If satisfied that he was not, as I sincerely hope they may be, upon the evidence in the case before us, they will then have the pleasant duty to perform of pronouncing him not guilty. But whatever may be their conclusion, we feel the utmost confidence that the prisoner, though a foreigner, will have no just cause to complain that he has suffered wrong at the hands of an American jury.

At our hands the prisoner had a right to require an answer upon the facts presented by his papers, whether in law he can properly be holden to a trial. We have had no choice but to examine and pronounce upon the legal character of those facts, in order to satisfy ourselves of the bearing they might have on the novel and important question submitted. That examination has led to the conclusion that we have no power to discharge the prisoner.

He must, therefore, be remanded, to take his trial in the ordinary forms of law.

☞ FUNERAL OF DR. MACNEVEN.—At a meeting of the Repeal Association and the Friends of Ireland, held at Washington Hall on evening (Tuesday) the 13th instant, the following resolution was unanimously passed:

Resolved, That the several Societies of Irishmen of this city and Brooklyn be, and they are hereby requested to meet properly organized at Carroll Hall at 10 o'clock, A. M. this day, for the purpose of attending the funeral of Dr. W. J. MACNEVEN.

THOS. O'CONNOR, Chairman.

J. B. NICHOLSON, Secretary.

☞ THOMAS H. SHUSTER, a young man of twenty-five, convicted of the murder of his wife at Philadelphia, has been refused a new trial and sentenced to death.

By this Morning's Southern Mail.

Correspondence of the Tribune.

WASHINGTON, Monday, July 12.

In the Senate to-day, Mr. TALLMADGE presented a memorial of citizens of New-York for a Bankrupt Law. He took occasion in a brief and powerful manner to express his conviction of the interest and importance of this subject to the citizens of the entire Union, and of the necessity of action on it by Congress at the present Session. He referred to a declaration that had been made, that the bill would not pass at this Session, from the opposition of Mr. Clay, and his belief of the untruth of this; and that the distinguished Senator, as ever, was ready to comply with the wishes of the people in this bill as soon as it could be reached.

Messrs. WALKER, LINN and MOREHEAD briefly gave their views favor of such a bill.

Other petitions of this character were presented; and also a petition by Mr. TAPPAN, from citizens of Ohio against the establishment of a National Bank, a Protective Tariff, the Distribution of the Proceeds of the Public Lands, and the Assumption of the State Debts.

Mr. SMITH of In. from the Committee on Public Lands, reported the Distribution Bill from the House, with amendments.

The special order, the Fiscal Bank bill, was then taken up.

Mr. WRIGHT offered an amendment, striking out the clause providing for the purchase by the Government of one-third of the capital. He briefly advocated it, on the ground of an entire divorce of Government with moneyed institutions, and on the ground of financial policy.

Mr. CLAY replied, showing that the Senator had entirely overlooked the design of this institution, which was to regulate the currency: and it was effective in its operations, preserving the government from the losses sustained by the Swartwouts and Prices under the Sub-Treasury.

It was farther debated by Messrs. CLAY, WRIGHT and CALHOUN at some length. In the course of the debate, Mr. CLAY, in reference to the time already consumed in this bill, declared his willingness to support a proposition which should place the business of the session in the hands of the majority. The people demanded 'action,' 'action,' and he was for complying with their request.

Mr. CALHOUN said the cry for relief arose from those who were interested in State Stocks, and were wishing another expansion of the currency to relieve them—that the cry for "action" was nothing but a cry for "plunder," "plunder." To the sturdy yeomanry and the business portion of the community, who are now looking anxiously to the measures of reform of this EXTRA Session, we will refer this sentiment for decision. The amendment was rejected by Yeas 22, Nays 27.

Mr. WRIGHT offered an amendment prohibiting the Secretary of the Treasury to subscribe for the United States the one-third of the twenty millions to be subscribed by private individuals, and providing that the Bank shall not do business till this whole amount is taken up by individuals and corporations, and briefly advocated it. Mr. CLAY of Ky. opposed this with his usually profound and clear reasoning, and in his remarks touched on the unconstitutionality of a repeal of this charter before the period of its limitation. To this Mr. BUCHANAN replied in a spirited manner, contending that it was in the power of Congress to repeal the charters of Public Institutions at any time. Mr. CLAY rejoined, and Mr. BUCHANAN again replied, in an interesting manner, showing the gigantic abilities of both, and the tremendous power of the arguments of which both are possessed.—This amendment was rejected. Yeas 21—Nays 28.

Mr. CLAY, of Alabama, offered an amendment, providing that the President appoint those directors to which the individual stock which may be taken by Government, is entitled—which was rejected: Yeas 17, Nays 27.

Other slight verbal amendments were offered.

The House immediately resolved itself into a Committee of the Whole, (Mr. Briggs in the chair,) and took up the Loan Bill.

It was opposed by Messrs. J. W. JONES and ATHERTON, and advocated by Messrs. G. DAVIS of Ky., DAWSON and FILLMORE. The hour of two having arrived, the debate ceased under a resolution of Friday, and the Committee proceeded to vote on amendments. It was passed in Committee; and in the House Mr. MORGAN moved the Previous Question, which was sustained—Yeas 126, Nays 88.

The amendments having been agreed to, the bill was then passed: Yeas 127; Nays 91. As amended, the bill provides for a loan of twelve millions of dollars, at six per cent. interest, redeemable in not less than three nor more than eight years.

The hour-law for speeches, and the resolutions to take out of Committee at special times, work well and greatly facilitate action on measures of relief and reform, so anxiously awaited by the people, who will not fail to reprobate Mr. Calhoun's sentiments, before noticed. ARGUS.

APPOINTMENTS BY THE PRESIDENT,

By and with the advice and consent of the Senate.

CHARLES ANTHONY, Attorney of the United States for the District of Ohio.

Marshals of the United States.

Gervais Fontenot, for the Western District of Louisiana.
Demos Adams, for the District of Ohio.
William B. Blackburn, for the District of Kentucky.

BURGLARIES.—Last night no less than seven stores and counting houses on the wharf north of Pine st. were broken into, ransacked and robbed of the *small change* left in the desks. The fire-proofs were tried but not opened. The amount of cash taken does not probably exceed ten dollars; no merchandize is missed. [Phil. Nat. Gaz. of last evening.

☞ JEREMIAH CURTIS of Calais has been nominated for Governor of Maine, by the Political Abolitionists of that State.

☞ Judge DAVIS, of the U. S. District Court for Massachusetts, retired from the Bench on Saturday last, after a service of over forty years.

☞ Williamson and Seal, the English burglars, were brought up for sentence on Saturday last in Boston, but begged off on account of important disclosures they have made or are about to make. Each is State's evidence against the other and several more villains. Williamson is wanted to take his trial for robbery in Philadelphia.

☞ The last Sun puffs the solvency, &c. of the publisher's '*Manufacturer's Bank of Ulster.*' If the Bank is solvent, why not redeem the bills where they are issued? Every body knows that this Bank is located at The Sun office, owned entirely by Moses Y. Beach, and managed by him. Its business is to shave notes over the counter of that office. Its pretence of location in Ulster is a sham, intended only to evade the redemption of its notes where they are issued and circulated. Is this right? Ought this Bank to be allowed to shave its own notes? Are not our mechanics and laborers cursed sufficiently with 'discount' on the money in which their hard earnings are paid without having imposed on them notes *made on purpose to be shaved*. These questions are not answered by a parade of State Stocks at Albany. Do they not require an explanation?